

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LENWOOD HAMILTON,)	
)	
Plaintiff,)	
)	
v.)	
)	
LESTER SPEIGHT, EPIC GAMES, INC.,)	Case No. 2:17-cv-00169-AB
MICROSOFT, INC., MICROSOFT)	
STUDIOS, and THE COALITION,)	
)	
Defendants.)	

**MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT (Dkt. 33)
BY DEFENDANTS MICROSOFT, INC., MICROSOFT STUDIOS,
THE COALITION, EPIC GAMES, INC., AND LESTER SPEIGHT**

Pursuant to Fed. R. Civ. P. 12(b)(6), defendants Microsoft, Inc., Microsoft Studios, The Coalition¹, Epic Games, Inc., and Lester Speight (collectively, "Defendants") respectfully move this Court for an order dismissing Plaintiff Lenwood Hamilton's Second Amended Complaint (Dkt. 33) with prejudice.

Dismissal is proper for the following independently sufficient reasons. First, the First Amendment protects any alleged use of Hamilton's identity. Second, Hamilton has not alleged sufficient facts to support a finding that the Defendants used his likeness or voice in the video games at issue. Third, Hamilton has otherwise failed to allege facts supporting the elements of his claims under the Pennsylvania right of publicity statute, the Lanham Act, and the common law. Finally, the doctrine of laches bars Hamilton's claims.

¹ Microsoft Studios and The Coalition are trade names of Microsoft and its wholly owned subsidiaries, which Microsoft refers to in connection with this motion as "Microsoft."

In support of this Motion, the Defendants respectfully refer this Court to the accompanying Memorandum of Law and the Declarations and exhibits filed at Dkt. Nos. 25-3 through 25-17.

Date: April 28, 2017

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